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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,490

Applicant(s)

HEIBEL ET AL.

Examiner

John R. Hardee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7-15 and 17-24 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10062005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II and species b of claim 2 in the reply filed on March 23, 2006 is acknowledged.
2. Claims 3 and 6 are withdrawn from consideration by the examiner as being drawn to an invention non-elected without traverse. The remaining claims were searched and examined only to the extent that they read on the elected cationic softener, as that was found not to be allowable.
3. Applicant's observations regarding claim 7 are acknowledged.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1, 2, 10, 11 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-3 do not end in periods. In claim 10, there is no polyamine in (d) of claim 9 or claim 1. Claim 19 consists of two sentences, the second of which appears to be superfluous.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

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F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 2, 4, 5, 7-9, 12-15 and 17-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-9 of U.S. Patent No. 6,620,777 in view of Popplewell et al., US 2004/0071742. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims recite softening compositions comprising a cationic softener, a fragrance oil and a beneficiating agent which may be encapsulated in a water soluble cross linked polymer as presently recited. Use of an encapsulated fragrance as claimed is not disclosed. Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products (abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the encapsulated fragrance of Popplewell into the fabric softeners of Smith, because Popplewell teaches at [0013] that encapsulated

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perfumes can be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

8. Claims 1, 2, 4, 5, 7-9, 12-15 and 17-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,864,223 in view of Popplewell et al., US 2004/0071742. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims recite softening compositions comprising an ester quat cationic softener, a fragrance oil and a water soluble cross linked polymer as presently recited. Use of an encapsulated fragrance as claimed is not disclosed. Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products (abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the encapsulated fragrance of Popplewell into the fabric softeners of Smith, because Popplewell teaches at [0013] that encapsulated perfumes can be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

9. Claims 1, 2, 4, 5, 7-9, 12-15 and 17-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of copending Application No. 10/914,852 in view of Popplewell et al., US 2004/0071742. Although the conflicting claims are not identical, they are not patentably

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distinct from each other because the '852 recites a composition comprising an ester quat, a perfume and a water soluble cross linked polymer as presently recited. Use of an encapsulated fragrance as claimed is not disclosed. Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products (abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the encapsulated fragrance of Popplewell into the fabric softeners of Smith, because Popplewell teaches at [0013] that encapsulated perfumes can be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1, 2, 4, 5, 7-9, 12-15 and 17-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 10/424,441 in view of Popplewell et al., US 2004/0071742. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '441 recites a composition comprising an ester quat, a perfume, a chelant, and a water soluble cross linked polymer as presently recited. Use of an encapsulated fragrance as claimed is not disclosed. Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products

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(abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the encapsulated fragrance of Popplewell into the fabric softeners of Smith, because Popplewell teaches at [0013] that encapsulated perfumes can be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

11. Claims 1, 2, 4, 5, 7-9, 12-15 and 17-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/320,067 in view of Popplewell et al., US 2004/0071742. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '441 recites a composition comprising an ester quat, a perfume, a chelant, and a water soluble cross linked polymer as presently recited. Use of an encapsulated fragrance as claimed is not disclosed.

Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products (abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the

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encapsulated fragrance of Popplewell into the fabric softeners of Smith, because Popplewell teaches at [0013] that encapsulated perfumes can be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

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under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

15. Claims 1, 2, 4, 5, 7-9, 12-15 and 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al., US 2002/0132749 in view of Popplewell et al., US 2004/0071742. Smith discloses liquid fabric softening compositions comprising a thickener obtained by polymerizing 5-100 mole % of a cationic vinyl addition monomer, 0-95 mole % of acrylamide, and 70-300 ppm of a divinyl addition monomer cross-linking agent (abstract). The polymer improves the deposition of fragrance oil. The compositions further comprises from 0.01% to 35% by weight of a cationic softener [0017]. The softener may be a monoester quat, as shown at [0020] or a mixture of ester quats, as shown at [0023]. It is well known in the art that these latter ester quats are formed as a mixture of mono-, di- and triesters. Aminocarboxylate and aminophosphonate chelants are disclosed at [0031]. Use of an encapsulated fragrance as claimed is not disclosed. Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products (abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the encapsulated fragrance of Popplewell into the fabric softeners

of Smith, because Popplewell teaches at [0013] that encapsulated perfumes can be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

Allowable Subject Matter

16. Claims 10 and 11, to the best that the examiner can understand them, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

17. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. The following is a statement of reasons for the indication of allowable subject matter: The closest prior art of record is the references relied upon above. They do not disclose or make obvious the use of an oxirane-crosslinked polyamine as the cationic polymer of part (d) of claim 1, assuming that this is what applicant meant to recite. Regarding claim 16, the compositions of Smith are clearly dilute liquids. Use in the form of a dryer sheet would not be obvious based on the description.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through

Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Mr. Douglas McGinty, may be reached at (571) 272-1029.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. Hardee', is positioned above the printed name.

John R. Hardee
Primary Examiner
March 28, 2006